IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 599 OF 2005

1. Smt. Rahimatbi Babulal Saiyad
   & ors. ... Appellants

V/s

Rangu Kondiba Shinde ... Respondent

Mr. U.B. Nighot for the appellants.

CORAM: P.V. KAKADE, J.

DATED: 11TH AUGUST, 2005

P.C.:

1. The appellants have filed this appeal against the judgment and order passed by the Addl. District Judge, Satara, dated 31.7.2004 dismissing the appeal and confirming the judgment and order passed by the Joint Civil Judge, Jr.Divn., Islampur, dated 23.4.1998 dismissing the plaintiffs' suit for specific performance of the contract.

2. I have heard the learned counsel for the appellants. Perused the record.

3. Plaintiffs filed the suit alleging that the

defendants had executed the suit agreement for sale of the suit property on 25.3.1984 and accepted the amount of Rs.16,000/- at the foot of the said agreement. The plaintiffs also alleged that the possession of the suit property was handed over to him by virtue of the said agreement and he was always ready and willing to perform his part of the contract and hence when the defendants denied to execute the sale deed, the suit was required to be filed.

Defendants contested the suit inter-alia submitting that the allegations made by the plaintiffs were false and there was neither any agreement nor any part consideration was paid and it was further submitted that possession of the suit property was never handed over to the other side and, as such, the suit was sought to be dismissed.

4. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the plaintiffs failed to prove that deceased Baburao had executed the agreement of sale on 25.3.1984 by receiving Rs.16,000/- at the foot of the agreement. It was also not proved that possession of the suit property was passed through the plaintiffs as part of the agreement and plaintiffs

also did not prove that they were ready and willing to perform his part of the contract and, as such, the suit for specific performance came to be dismissed.

The appeal was carried to the District Court, Satara. The learned Addl. District Judge, Satara, after hearing both sides, came to the conclusion that the findings recorded by the Trial Court were just, legal and proper and, therefore, dismissed the appeal. Hence the present appeal.

5. At the outset, it may be noted that there is absolutely no substantial question of law involved in this appeal. It is the case of the plaintiffs that the suit agreement was of the year 1984 i.e. it was executed on 25.3.1984 and the amount of Rs.16,000/- was paid to deceased Baburao at the foot of the suit agreement and possession of the property was handed over to him. Thereafter for 10 years, as it appears from the record, the plaintiffs kept quiet and filed the suit for specific performance in the year 1994. This undue delay is not at all satisfactorily explained by the plaintiffs. Needless to mention that the relief of specific performance is discretionary relief and both the Courts below, while non-suiting the plaintiffs, have

come to the conclusion that the plaintiffs have failed to prove execution of the agreement and passing of part consideration. The evidence is also lacking to prove that possession of the suit property was handed over as part of the agreement between the parties and, as such, it was held that the plaintiffs failed to establish that they were ready and willing to perform their part of the contract.

6. I do not see any reason whatsoever to disturb the concurrent findings recorded by both the Courts below which are issues of fact and, as such, I have no hesitation to hold that the appeal has no merits and, therefore, deserves to be dismissed.

Hence, the appeal stands dismissed. Consequently, the Civil Application No. 1028 of 2005 also stands dismissed.

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